

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:07-CV-439-F

JOE HAND PROMOTIONS, INC., )  
as Broadcast Licensee of the February 3, 2007, )  
UFC 67 Program, )  
Plaintiff, )

v. )

ORDER

)  
TOM KAZNOWSKI and TED MAJCHRZAK, )  
Individually, and d/b/a THE UPPER DECK )  
SPORTS PUB, a/k/a UPPER DECK SPORTS PUB,) )  
and THE UPPER DECK a/k/a UPPER DECK a/k/a )  
UPPER DECK SPORTS PUB, and THE UPPER )  
DECK SPORTS PUB a/k/a THE UPPER DECK )  
a/k/a UPPER DECK a/k/a UPPER DECK SPORTS )  
PUB, )  
Defendants. )

This matter is before the court on notice by the Clerk of Court that defendants Ted MAJCHRZAK and The Upper Deck Sports Pub have failed to comply with this court's order [DE-33] to obtain substitute counsel and cause counsel to file a notice of appearance, or to notify the court of their intention to appear *pro se*.<sup>1</sup> Neither defendant has responded to the court's order.

Also ripe for disposition is the plaintiff's Motion for Summary Judgment [DE-29]. Although the deadline for filing a response has passed, the defendants have filed neither a response nor a motion for extension thereof. Having reviewed the plaintiff's uncontested motion

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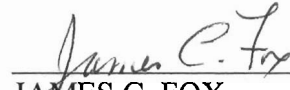
<sup>1</sup> Although defendant MAJCHRZAK may represent himself, individually, if he so chooses, the court mistakenly extended that option to The Upper Deck Sports Pub. A corporation must appear through a licensed attorney, *see Rowland v. California Men's Colony Unit, II Men's Advisory Council*, 506 U.S. 194, 202 (1993), in compliance with applicable federal and local rules.

in light of the record, the court concludes that no genuine issue of material fact exists for trial and that the plaintiff is entitled to judgment as a matter of law. Accordingly, plaintiff's Motion for Summary Judgment [DE-29] is ALLOWED. Plaintiff is DIRECTED to file an affidavit on or before **June 30, 2009**, setting forth with particularity its demand for, and proof of, statutory penalties allegedly due as a result of the defendants' violation of the Federal Communications Act, 47 U.S.C. §§ 553, 605(a), and 605(e)(4) on February 3, 2007, together with its detailed affidavit of attorneys' hours expended, proposed hourly rate(s) and justification therefor, and costs incurred in prosecuting this action.

In light of the disposition of this matter on summary judgment as ordered above, the court declines, at this time, to pursue contempt proceedings against the defendants for their failure to comply with this court's order of March 11, 2009, [DE-33] directing them to appear by a date certain through substitute counsel (or, as to defendant MAJCHRZAK, *pro se*).

SO ORDERED.

This the 1<sup>st</sup> day of June, 2009.

  
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JAMES C. FOX  
Senior United States District Judge